

### **REMARKS**

Reconsideration of the application in light of the following remarks is respectfully requested.

### **Status of the Claims**

Claims 1-10 are pending before entry of this Response. Claims 1 and 6 have been amended. No claims are cancelled, and no claims are added. No new matter has been added.

### **Decision on Appeal**

Claims 1-2, 4-6 and 8-10 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,650,640 to Muller et al. ("Muller") in view of U.S. Patent No. 6,405,258 to Erimli et al. ("Erimli") and in further view of U.S. Patent Application Publication No. 20020131365 to Barker et al. ("Barker"). Claims 3 and 7 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Muller as modified by Erimli in further view of U.S. Patent No. 7,031,341 to Yu ("Yu") and Barker. These rejections were appealed to the BPAI under Appeal No. 2009-011368.

The BPAI has affirmed these rejections in a decision mailed August 11, 2011 ("Decision"). The Decision states:

**"To the extent that Appellants argue that Muller routes packets to more than one congestible node, and not "exactly one node" (Br. 15), is not only unsupported on this record, but is not commensurate with the scope of claim 1. Although the claim recites that all received protocol data units are en route to "a" first congestible node, that hardly means that they must be routed to only one such node. See *KCJ Corp. v. Kinetic Concepts, Inc.*, 223 F.3d**

1351, 1356 (Fed. Cir. 2000) (noting the indefinite article "a" or "an" means "one or more" in open-ended claims containing the transitional term "comprising"). So even if we were to assume that Muller routes packets to multiple NICs (a finding that has not been made on this record in any event), **the scope and breadth of claim 1 reciting routing all protocol data units to "a" first congestible node does not preclude routing those units to additional nodes."**

Decision, p. 7 (italic emphasis in original).

Applicants have amended claims 1 and 6 to recite "~~a first~~ exactly one congestible node." Applicants herewith apply the argument presented in the Appeal Brief filed on April 28, 2008, and submit that amended independent claims 1 and 6 are not rendered obvious by Muller in view of Erimli and Barker.

In particular, nowhere do Miller, Erimli or Barker, alone or in combination, teach or suggest, what amended claims 1 and 6 recite - namely, receiving a first plurality of protocol data units at a first input, wherein all of the protocol data units are en route to exactly one congestible node. In other words, all of the protocol data units that arrive at one input are destined for one congestible node - not one of two or three nodes - but exactly one node. The purpose of this limitation is to exclude protocol-data-unit excisors - that perform switching (such as those in Miller) from the scope of the claim.

Applicants submit that for the reasons set forth above, claims 1 and 6 are allowable, and that claims 2-5 and 7-10 are allowable at least by reason of their dependency upon an allowable base claim. Applicants request reconsideration and withdrawal of the rejection of claims 1-2, 4-6 and 8-10 under § 103(a) over Muller in view of Erimli and Barker, and the rejection of claims 3 and 7 under § 103 over Muller in view of Erimli, Yu and Barker.

### CONCLUSION

Each and every point raised in the Office Action mailed on October 4, 2007 and affirmed by the BPAI decision mailed on August 11, 2011 has been addressed on the basis of the above remarks. In view of the foregoing it is believed that claims 1-10 are in condition for allowance and it is respectfully requested that the application be reconsidered and that all ending claims be allowed and the case assed to issue.

In view of the foregoing, the Applicants believe the above-captioned patent application is now complete. If, however, the Office believes any unresolved issues still exist or if, in the opinion of the Office, a telephone conference would expedite passing the present application to issue, the Office is invited to call the office of the undersigned at 732-345-0400 so appropriate arrangements can be made for resolving such issues as expeditiously as possible. The Commissioner is authorized to charge any fees, or credit any refund, to Deposit Account No. 50-4267.

Respectfully submitted,

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